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Supreme Court, U.S.
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No. 97-1418

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,
Successor by merger to Bank of America Illinois,

Petitioner,

v.

203 NORTH LASALLE STREET PARTNERSHIP,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION TO DISMISS

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MOTION TO DISMISS WRIT OF CERTIORARI AS IMPROVIDENTLY GRANTED

Respondent, 203 North LaSalle Street Partnership, moves to dismiss the writ of certiorari issued in this case as improvidently granted. Regardless of the importance which this Court attaches to the issue on which certiorari was granted, considering that issue in this case, in the context of an unstayed order confirming a substantially consummated plan of reorganization, is a mistake.

Merely, issuing the writ has created a substantial risk that good faith transactions consummated in reliance on unstayed orders confirming plans of reorganization can be rescinded, thereby:

a) harming creditors in many pending reorganization cases by reducing the realizable value of assets, and

b) encouraging frivolous appeals.

When deciding how much to offer creditors, potential investors in reorganizing entities have always relied upon the fact that no court has ever reversed an unstayed order confirming a substantially consummated plan of reorganization. Issuance of the writ in this case has undermined that justifiable reliance. The adverse consequences for creditors are self-evident. "People pay less for assets that may be snatched back . . . ." *In the Matter of UNR Industries, Inc.*, 20 F.3d 766, 771 (7th Cir. 1994).

Moreover, frivolous appeals from such unstayed orders have been discouraged by the certainty of dismissal. Issuance of the writ in this case has removed the barrier to such appeals, encouraging blackmail by parties with

insignificant claims or interests who threaten to bring reorganizations to a halt by appealing confirmation of a plan of reorganization.[1]

In support of this Motion, Respondent incorporates by reference the argument and authority contained at pages 9 through 15 of its Response in Opposition to the Petition for Writ of Certiorari. Petitioner replied to that argument and substantial authority supporting it only by mischaracterizing Respondent's resistance to issuance of the writ as an attempt to alter the judgment below, and by incorrectly suggesting that the relief sought by Respondent required alteration of factual findings by lower courts. In fact, Respondent does not seek to disturb the judgments of the lower courts, but merely opposes the issuance of a writ of certiorari. Furthermore, Respondent never asserted that this Court should review the lower courts' factual findings. Instead, Respondent argued that, based upon those facts, especially good faith reliance by investors on the unstayed confirmation order, it is no longer *prudent* for this Court to grant relief that would cause recission of previously consummated transactions. Rather than cite any authority in response to the numerous well-reasoned cases relied upon by Respondent in its brief, Petitioner merely dismisses as "preposterous" Respondent's contention that consideration of this case on the merits will cast doubt on finality of confirmation orders. Reply Brief for Petitioner at 4-8.

[1] "A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter [Chapter 11]." 11 U.S.C. § 1109(b). Therefore, a creditor holding a claim, no matter how small, and a shareholder holding a single share of stock has standing to appeal.

Respectfully submitted,

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